

NEBRASKA ADMINISTRATIVE CODE

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Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 4 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Following receipt of a report prepared by the Director in accordance with section 3-001, the Commission may request additional information from the Applicant. At the first regular meeting following receipt of that report, the Commission will decide whether (1) to act at the next regular meeting to approve or reject the findings of fact made by the Director pursuant to section 3-004 and the recommendations of the Director made pursuant to section 3-001 or (2) to defer such action until a later date. If any such deferral is made, it shall be to a date no later than eighteen months following receipt of the Director's report and shall be for the purpose of allowing the Commission to rank all projects for which the Commission has not taken action on a report provided by the Director pursuant to section 3-001 and, if desired by a Sponsor thereof, any project for which action on a report provided by the Director was acted upon in the previous four years but for which no funds have yet been allocated. Prior to the initial Commission action on any project, a delegation composed of Commission members shall visit the project site and report the results of its tour to the Commission or the appropriate committee of the Commission. Action on recommendations made by the Director pursuant to subsections .01 and .02 of section 3-001 shall be in accordance with such recommendations unless action to the contrary is approved by each Commission member eligible to vote on the specific recommendation under consideration. Recommendations made by the Director pursuant to subsections .03, .04, and .05 of section 3-001 may be acted upon by the concurrence of a majority of the Commission. A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan only if such member is a member of the governing body or otherwise represents the applicant for financial assistance. All Commission members shall be eligible to vote on programs and projects involving state acquisition of interests in projects pursuant to Section 2-1590, R.S.Supp, 2006 as amended. If the Commission determines, following review of the application, feasibility report, and the Director's report, that the proposed program or project is eligible for financial assistance from the Fund, the Commission shall determine a

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tentative dollar figure for such assistance. Tentative allocations shall also be established for each separable component of the project, as determined in accordance with section 4-007. In establishing its tentative allocations, which can be for zero dollars, the Commission may take into consideration the recommendations of the Director pursuant to subsection .04 of section 3-001, the nature of the project and the factors associated with it, the total amount of money available in the Fund, any fiscal limitations placed by the Legislature upon allocations from the Fund, and the number of and total tentative dollar allocations for other programs and projects previously determined eligible. No tentative grant allocation shall exceed an amount equal to seventy-five percent (75%) of the portion of the estimated project costs which the local sponsor would be required to provide if financial assistance from the Fund was not available. The Commission may vary the maximum allowable cost-share rate for different categories of projects. No tentative loan allocation or combination loan and grant allocations shall exceed an amount equal to ninety percent (90%) of such portion of the estimated project costs.

002 Project Totals Exceeding Balance in Fund. Although the total of previously approved allocations exceeds the amount of funds then available in the Fund, the Commission may approve the eligibility of additional projects and establish tentative dollar allocations for such projects if such projects are otherwise eligible for financial assistance and if such approval and tentative allocations are otherwise consistent with state law. Notwithstanding any such approval, a sponsor shall not under any conditions be entitled to reimbursement for any project costs until funds have been apportioned and set aside in accordance with sections 4-008 or 4-009 for reimbursement of costs incurred by the sponsor on such project. Costs paid, accrued or authorized by a sponsor prior to funds being set aside for such projects and costs paid, accrued or authorized by a sponsor for portions of project development in excess of those portions for which funds have been set aside, including application and engineering costs, shall be incurred at the risk of the sponsor and such sponsor shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement. Such costs may, however, be used by the sponsor to satisfy in whole or in part the sponsor's share of the total costs of the project if funds for remaining project costs are later apportioned and set aside for such project in accordance with sections 4-008 or 4-009.

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003 Annual Availability of Funds. Regardless of the status of the Fund at the time of Commission approval of the eligibility of a project, the extent, if any, to which financial assistance will be provided to such project in any one fiscal year shall be in accordance with and contingent upon the availability of funds and Commission action apportioning and setting aside funds for such project in such fiscal year in accordance with sections 4-008 or 4-009.

004 Continued Funding. In order to assure continued funding of projects with no separable components and of separable project components which are not further separable, the Commission, when it first apportions and sets aside in accordance with sections 4-008 or 4-009 funds for such project or project component, shall set aside an amount equal to the appropriate percentage of the total cost of the project or the component even if it is not anticipated that all of such funds could be expended during the next ensuing fiscal year. Funds thus apportioned and set aside shall, as soon as costs have been incurred by the sponsor subsequent to such apportionment, remain set aside and be committed for such project or project component until the sponsor has received all reimbursement to which it is entitled unless:

004.01 The project is abandoned or significantly delayed;

004.02 The Commission has reasonable grounds for concern that the project or any portion of it may not be completed due to public opposition, litigation, or the loss of other state, local or federal funds needed to complete the project;

004.03 The Department fails to receive a reappropriation of unexpended funds;

004.04 The appropriation for the Resources Development Fund is reduced by subsequent legislative act; or

004.05 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

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If the Commission determines at any time that any of these conditions have occurred, any funds apportioned and set aside for the project which have not been disbursed may be deemed by the Commission and the Department to be no longer apportioned and set aside.

005 Funding Preferences. In order that the maximum practicable assurance of continued funding may be provided to sponsors of uncompleted projects which have previously been apportioned funds for one or more separable components, preference shall be given such projects and project components whenever funds are apportioned and set aside in accordance with section 4-008 or section 4-009.

006 Determination of Fiscal Year Financial Needs.

006.01 No later than March 31 of each year each sponsor willing to utilize and capable of utilizing either an initial or an additional apportionment of funds for a project which has been determined eligible for funding shall submit a report to the Director indicating as follows:

006.01A If the project has no previously identified separable components and no request is made for identification of any such components, the report shall indicate the estimated time schedule for beginning and completing the project.

006.01B If the project has separable components, the report shall indicate the component or components for which the sponsor is requesting an apportionment and the estimated time schedule for commencing and completing such component or components.

006.01C If desired by the sponsor, the report may also include a request for the identification of separable components for a project with no previously identified separable components or for the separation of one or more previously identified separable components into additional separable components. Any such request shall

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be accompanied by an estimate of the costs for completing all separable components for which identification is requested. For those components for which apportionment of funds is desired, the information required by part B of this subsection shall also be provided.

006.01D The extent of any opposition to completion of the project, or any separable component, including whether any lawsuits to prevent its completion have been instituted or are anticipated, whether any problems are being experienced or are anticipated in obtaining sufficient funds to meet the sponsor's financial obligations for the project, and whether any other factors exist which may affect the sponsor's ability to complete the project.

007 Separable Components. If a project plan provides that development of the project will take place on two or more land areas not contiguous to each other, the project portion planned for each such land area shall constitute a separable component of the project. Projects for which total project development will take place all on one contiguous land area and separable components of projects of the type described above may also have separable components. A project component shall be deemed to be any distinguishable phase of project development including such phases as land rights acquisition, project construction, and related facilities development. The extent to which such components constitute separable components for any project shall be determined by the Commission after consultation with the Director and the sponsor. In the event that any project is determined to have separable components, the Commission shall take action to identify such separable components and to determine the estimated costs of completing each such component.

008 Apportioning and Setting Aside Funds. Prior to July 1 of each year the Commission shall apportion and set aside available funds for projects and project components eligible for funding assistance. In making such apportionments, the Commission shall consider the following:

008.01 Whether it is reasonable to expect that each project or project component for which funding is requested is capable of being commenced within the next ensuing fiscal year;

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008.02 Whether any of the projects or project components proposed for funding by the sponsors could, in the opinion of the Commission, be delayed without significant adverse effects on the total project;

008.03 Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, federal, or other state funds needed to complete the project;

008.04 The funding preferences established in section 4-005;

008.05 Each project's rate-of-return on the investment;

008.06 The water and related resources needs addressed by each project;

008.07 The economic impact of each project on the local and/or regional economy;

008.08 The environmental impact of each project;

008.09 The support for or opposition to each project;

008.10 The urgency of need for each project;

008.11 The extent of benefit provided by each project; and

008.12 How to make the most efficient utilization of the available funds.

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Prior to the Commission's action apportioning and setting aside funds for a given fiscal year, the Department shall invite the sponsors of all projects for which funding has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission.

009 Adjustments in Apportionments. A sponsor may at any time during the fiscal year submit reports containing an update of the information contained in the report submitted in accordance with section 4-006. A sponsor of a project for which no report was submitted in accordance with section 4-006 may also at any time submit a report containing the information required by such section. At the first Commission meeting following August 1, November 1, and February 1 of each year, the Commission shall review all such reports, if any, which have been submitted since the last such review, and any other relevant information available to it and shall, if appropriate and consistent with the funding preference established in section 4-005, make adjustments in the amount apportioned and set aside for any project for that fiscal year. No amount previously apportioned and set aside in accordance with sections 4-008 shall be decreased unless:

009.01 The sponsor has indicated a decrease in needs;

009.02 The Commission, based on information contained in the sponsor's report submitted in accordance with section 4-006 or other information available to it, finds that there are reasonable grounds for concern that the project or any separable component may not be completed;

009.03 The project is abandoned or significantly delayed;

009.04 The Department fails to receive a reappropriation of unexpended funds;

009.05 The appropriation for the Resources Development Fund is reduced by subsequent legislative act, or;

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009.06 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

In case of any such findings, the Commission may modify, suspend or revoke any previous action to apportion and set aside funds for the project or any separable component. Provided, however, any action to modify, suspend, or revoke any previous apportionment shall not affect the sponsor's right to reimbursement for costs which it has incurred or for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the sponsor's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an apportionment.

010 Limitation on Reimbursements. A sponsor shall not be reimbursed during any fiscal year in any amount in excess of the amount apportioned and set aside for the sponsor's project in accordance with sections 4-008 and 4-009.

011 Review and Approval of Final Plans. Prior to the actual disbursement of any funds for construction for the project or for any portion thereof, the Director shall review the final plans for the proposed program or project or the portion for which funds are requested. If it appears during such review or during any prior or subsequent review or inspection of the project plans or construction, or during any review of project cost information that:

011.01 The plans and specifications for the project are not being followed;

011.02 The plan for development or any work performed on the project are not based on sound technical principles or practices;

011.03 The project or any portion thereof no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's Rules and Regulations; or

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011.04 There is or has been non-compliance with any of the terms of the contract between the Sponsor and the Department.

The Director shall immediately bring such variances to the Sponsor's attention and may refuse to disburse any funds for the project until such time as the variances are corrected and the project is brought into conformance with all appropriate standards.

012 Limitation on Allocation. The amount actually disbursed for a program or project, or a separable component of a project, shall not exceed the dollar amount of the tentative allocation for the program, project or separable component approved by the Commission pursuant to section 4-001 or a dollar amount equal to the same percentage of the actual project costs as the tentative allocation represented to the estimated project costs, whichever is less, without specific Commission approval; except that funds apportioned and set aside for one separable component but not disbursed may be used to reimburse the Sponsor for the costs of another separable component even though such reimbursement may exceed the amount apportioned and set aside for that component if necessary in accordance with section 4-002 to achieve or maintain the appropriate ratio between eligible project costs paid by the Sponsor and those paid by the Department.

013 Contractual Arrangements. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Department setting forth terms and conditions of such loan or grant has been executed.

014 Disbursements. The Director shall disburse, no more often than once each month, such funds from those apportioned and set aside to a program or project as are necessary to reimburse, in the proper proportion, all eligible costs incurred by the applicant in carrying out the program or project since the next preceding disbursement, if any. All such costs shall be documented by the applicant in such manner as is directed by the Director prior to the disbursement of any funds. In the event that a program or project has been approved for combination grant and loan allocations, each disbursement shall, unless otherwise specified by the Commission constitute a disbursement of loan and grant funds in the same proportion as the totals of the allocation approved.

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015 Inspection During Construction. The Commission and Director shall have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection shall never subject the State of Nebraska to any action for damages. The Director shall bring to the attention of the sponsor and the project engineer any variances from the approved plans and specifications. The Sponsor and the project engineer or project director shall initiate necessary corrective action.

016 Changes in Scope of Approved Projects. The Sponsor shall promptly report all increases in the cost of a project, or any separable component of the project, and any proposed additions, deletions, or modifications of any separable component, or any change in the purpose or purposes of the project by submitting to the Director an amendment to the formal application and feasibility report. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the tentative allocation for the project, or any separable component, shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the tentative allocation for the project is requested, may at the discretion of the Commission, be referred to the Director for his or her review and recommendation regarding whether the project still meets the criteria for funding eligibility contained in the Act or the Commission's rules and regulations.

ANNOTATION

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Section 2-1586, R.R.S.,
1997; 2-1587, 2-1589,
2-1590, 2-1592, 2-1593,
and 2-1595, R.S. Supp.,
2000; and 2-1588 and
2-1594, as amended by
LB 129, 97th Nebraska
Legislature, 1st Session (2001)